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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

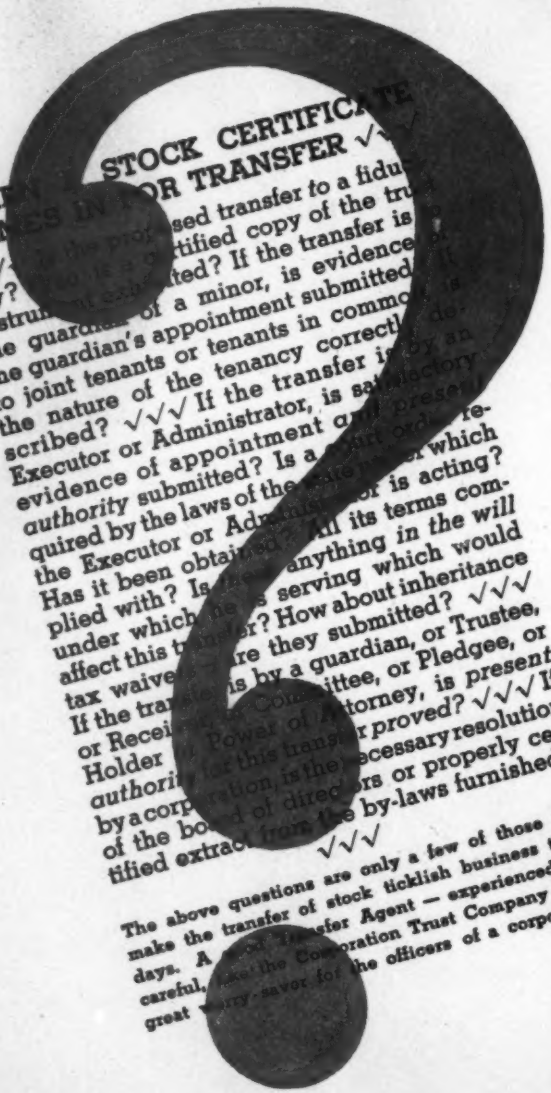
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, and statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

Two important recent decisions on the right of a state to tax the intangibles of a foreign corporation are found in *Wheelock Lovejoy & Co., Inc. v. Gill*, decided by the Illinois Supreme Court, holding that the intangibles of a foreign corporation may not be taxed in Illinois because no statutory authority could be found to warrant such a tax, (page 374 of this issue), and *Smith, Collector of Revenue of Green County, et al. v. The Ajax Pipe Line Company*, decided by the United States Circuit Court of Appeals, Eighth Circuit, to the effect that deposits in a New York bank, belonging to a Delaware corporation with its only office in Missouri, may be taxed in Missouri as having a situs there (page 375).

North Dakota has adopted a new Foreign Corporation Act, (Laws of 1937, House Bill No. 217). Under it, licenses of foreign corporations in North Dakota will expire March 1, 1938. After July 1, 1937, and prior to March 1, 1938, each foreign corporation licensed in North Dakota prior to July 1, 1937, will be required to obtain a certificate of authority for the privilege of doing business in the state subsequent to March 1, 1938.

Raymond Kurman

President.



The above questions are only a few of those that make the transfer of stock ticklish business these days. A stock Transfer Agent — experienced and careful, like the Corporation Trust Company — is a great safety-saver for the officers of a corporation.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for April

They Studied Law

More than one novelist, historian or poet has written the works upon which his fame rests with a background of knowledge acquired through the study of law. For instance:

ROBERT LOUIS STEVENSON studied law and was called to the bar before he wrote *Treasure Island* and *The Strange Case of Dr. Jekyll and Mr. Hyde.* CHARLES DICKENS, through his work as a court stenographer, obtained an insight into the routine of the courts, and from the knowledge thus gained he reported in entertaining form such cases as *Bardell against Pickwick*[1] and *Jarndyce and Jarndyce.*[2] JULES VERNE, who wrote *Around the World in Eighty Days,* was at one time a law student in France. WASHINGTON IRVING, who gave us *Rip Van Winkle* and *The Legend of Sleepy Hollow,* once had an office as an attorney-at-law at 3 Wall Street, New York City. GENERAL LEW WALLACE, who wrote *Ben Hur,* was long a member of the Indiana bar.

THOMAS CARLYLE, among the historians, studied law, as did JOHN LOTHROP MOTLEY and JOHN FISKE. Another historian, THOMAS BABINGTON MACAULAY, was called to the bar before he turned to writing.

There are poets who wrote briefs before they shaped the poetic phrases by which they are remembered.

SIR WALTER SCOTT practiced as an advocate for a time and then withdrew from the courts to devote his attention to his poetry and novels. THOMAS GRAY, who wrote *Elegy in a Country Churchyard,* was another poet who prepared himself for the practice of law. WILLIAM COWPER was called to the bar and THOMAS CHATTERTON was for a time a lawyer's clerk. JAMES RUSSELL LOWELL was admitted to the Massachusetts bar, although comparatively little of his life was devoted to practicing law. WILLIAM CULLEN BRYANT was also a member of the Massachusetts bar and practiced for several years before he turned to literary and journalistic work.

No doubt there are others who relinquished the law to achieve fame as poets. They differ from SIR WILLIAM BLACKSTONE, who gained a gold medal for some verses on Milton before he was twenty and, when entering the Middle Temple to take up the study of law, wrote a poem entitled "The Lawyer's Farewell to his Muse."

[1] *Pickwick Papers.*
[2] *Bleak House.*

Domestic Corporations

Alberta.

May a director, who is also a salaried employe, his salary, however, being unpaid, sue his fellow-directors under their statutory liability as directors to employes for unpaid wages? By statute, (Sec. 113, Companies Act, R.S.C. 1927, c. 27, now 1934 (Can.), c. 33), directors of corporations were made jointly and severally liable to "clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors." Plaintiff, after his election as a director, had been appointed by the directors as a salaried field manager. He brought suit against his fellow-directors to recover his unpaid salary under the statute mentioned. The Alberta Supreme Court, Appellate Division, reaching the conclusion that the action could not be maintained, said that it seems clear "that Parliament did not intend to make each member of a Board of Directors of a Dominion company jointly and severally liable to each other for work which a director performs as a 'clerk, labourer, servant or apprentice' of the company. The individual employed cannot split himself in two and say now I am a director and now I am a clerk or servant, or labourer." *Mulligan v. Lancaster et al.*, (1937) 1 D.L.R. 414. I. W. McArdle, for appellants. D. G. MacKenzie, K.C., for respondent.

California.

Where a corporation's statutory right to levy an assessment on stock is questioned by a stockholder, which law governs—that in effect at time of the issuance of his stock or that in effect at the time of the assessment? At the time plaintiff's stock was issued, the Civil Code permitted directors to levy assessments upon stock. Later, and prior to a levy by the defendant corporation, in connection with which a recovery is sought, the Code was amended to permit such a levy only if the articles of incorporation expressly conferred such authority. The levy was made before the articles of defendant had been so amended. The corporation contended that the provisions in force *at the time of the issuance of the stock* governed, and that therefore the levy was valid. The Supreme Court of California, however, upheld a judgment permitting a recovery by plaintiff stockholder of the amount of the assessment made, in view of the fact that the California Constitution, Article XII, contained provision for the alteration or repeal of laws concerning corporations. The court ruled that the law in force *at the time the levy was made* governed. As the directors were at that time without authority to levy assessments under the articles of incorporation, a recovery was allowed. *Schroeter, as Trustee in Bankruptcy of the United States Guaranty Corporation v. Bartlett Syndicate Building Corporation, Ltd.*, 63 P. (2d).824. Root, Bettin & Painter, Bettin, Painter & Wait and

Conant Wait of Los Angeles, for appellant. Geo. W. Fenimore, Haight, Mathes & Sheppard, Mathes & Sheppard and Robert A. Cushman of Los Angeles, for respondent. Chickering & Gregory and Lalor Crimmins of San Francisco, amici curiae.

Illinois.

"There is no such thing as a vested right to a particular remedy." Plaintiff Illinois corporation, which had been dissolved as a result of its failure to file its Illinois annual reports, to pay its franchise tax, and to maintain a place of business or principal office in Illinois, sought in this action in the United States District Court, N. D., West Virginia, to recover certain funds which had been held in escrow for it by defendant bank. Prior to the institution of this suit, however, the corporation laws of Illinois had been revised through the enactment of the Business Corporation Act (Laws 1933, p. 308), which resulted in an elimination of a provision of the prior law which gave an Illinois corporation the right and power to collect debts due it and to maintain suits in its corporate name for a period of two years after the date of dissolution. This change in the law the court held to constitute "a change in the corporation's remedy only and not a change in any vested or inchoate substantive right of such corporation," and it added: "There is no such thing as a vested right to a particular remedy." The remedy of a suit for the recovery of the funds held in escrow not being available to plaintiff at the time this action was begun, its suit was ordered dismissed. *Billiard Table Mfg. Corporation v. First-Tyler Bank & Trust Co.*, 16 F. Supp. 990. Nesbitt & Nesbitt of Wheeling, W. Va., for plaintiff. Handlan, Garden & Matthews of Wheeling, and Henry P. Snyder of Sistersville, W. Va., for defendant.

Kentucky.

Acceptance by corporation of benefits under one of two related pre-incorporation promoter's contracts, held to charge it with liabilities under the other. Appellant sued for 2,500 shares of the capital stock of appellee company, or its value, in return for services rendered on behalf of the company prior to its incorporation in securing the transfer to it, after incorporation, of certain real property. The services were rendered to one of the organizers of the company who had agreed in writing, after the organization of the corporation, to assign the stock to appellant. The Court of Appeals of Kentucky referred to the rule that usually it is held that promoters have no power to bind a corporation by a contract made for it before it has come into existence, but found that in this case two pre-corporate contracts had been made for the company, one for the purchase of the property and the other to pay appellant for finding it and arranging for its purchase. It held that both were parts of the activities of the promoters, and the corporation, having obtained the benefit of one contract, must accept the liability of the other.

A recovery was therefore allowed. *Lowther v. Blair Distilling Co.*, 99 S. W. (2d) 204. C. E. Schindler and H. S. Horen of Louisville and P. K. McElroy of Lebanon, for appellant. W. H. Spragens and C. C. Boldrick of Lebanon, for appellee.

New York.

If a judgment is recovered against a director in a state court for violation of Section 15, Stock Corporation Law, it is not a dischargeable debt under Section 17(a)(4) of the Federal Bankruptcy Act. The United States Circuit Court of Appeals, Second Circuit, has ruled that where a judgment, which was obtained by a creditor of a corporation under Section 15 of the New York Stock Corporation Law, indicates that the bankrupt, an individual, as a director of the corporation, brought about certain unlawful payments of the corporate funds when he knew the corporation was insolvent and that the interests of creditors would be sacrificed, there was a "misappropriation" of corporate funds within the meaning of Section 17(a)(4) of the Bankruptcy Act. The court holds that the resulting indebtedness to the corporation arising from the "misappropriation" is not a dischargeable debt. *In the matter of Barnett Bernard, bankrupt-appellant; New York Credit Men's Association, creditor-appellee*, United States Circuit Court of Appeals, Second Circuit, February 1, 1937. New York Law Journal, February 11, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 171255. Bregman & Bregman, attorneys for Barnett Bernard; Harry Malter and Herman Levenson, counsel. Samuel Sobel, attorney for New York Credit Men's Association; Nathan Weinstein and Isidore L. Weishar, counsel.

Oregon.

Subscription to stock, induced by fraudulent representations, may be rescinded if subscriber is not estopped by laches, acceptance of benefits or intervening rights of third parties. Defendant had subscribed for stock of a corporation later adjudged a bankrupt, of which plaintiff is trustee, suing defendant to foreclose a lien upon the latter's certificates. The trial court had found that defendant had been induced to subscribe for the stock through the misrepresentations of an agent of the company, made at a time when the corporation was insolvent. The Supreme Court of Oregon, in affirming the decision of the lower court, pointed out that such contracts, induced by fraud, although voidable, are valid and binding until the defrauded party elects to treat them as void, and may be rescinded if, at the time of the rescission, the corporation was a going concern and he had been diligent in discovering the fraud and was not estopped by laches, acceptance of benefits, or the intervening rights of third parties. *Gordon v. Ralston*, 62 P. (2d) 1328. E. R. Ringo of La Grande (Coan & Rosenberg of Portland, on the brief, for appellant. John S. Hodgin of La Grande, for respondent.

Rhode Island.

The Supreme Court of Rhode Island draws the line between statutory and equitable relief. Two sections of the statutes permitted proceedings for the appointment of receivers of corporations, one by petition and the other by a bill in equity. The proceedings by petition were limited by statute as to the relief which might be granted, while the full powers of a court of equity as to relief were available where the proceedings were initiated by a bill in equity. The Supreme Court of Rhode Island rules that where the petition method was adopted, the petitioner can be allowed no relief beyond that outlined by the statute, and the broader relief obtainable under a proceeding by a bill in equity is not available under the former method. *Petrovics v. The King Holdings, Inc.*, 188 A. 514. Edward Winsor, Henry B. Gardner, Jr., and Edwards & Angell, of Providence, for petitioner. Peter L. Cannon of Providence, for respondent King. Sisson & Fletcher, Edward G. Fletcher, Stockwell & Chace and Temkin & Temkin, of Providence, for various parties. McLyman & Day of Providence, for receiver.

Texas.

Corporations are entitled to jury trial on issue of bad faith of stockholder seeking inspection of corporate records. In an action in the lower court, a stockholder had proceeded against his corporation and its affiliated companies in an endeavor to inspect their books and records. The corporations alleged that the stockholder did not act in good faith and asked a jury trial on this issue and the case had been placed on the jury docket. The judge of the lower court had then issued an interlocutory order compelling the corporations to permit the stockholder to inspect their records. This the corporations now seek to have set aside in the present action in the Civil Court of Appeals of Texas, Dallas, in which the judge of the lower court is the principal defendant. This court holds the companies entitled to a jury trial on the issue of bad faith, and indicates that the action of the lower court, in attempting to allow the inspection prior to the jury trial, was improper. *Guaranty Old Line Life Co. et al. v. McCallum, Judge, et al.*, 97 S. W. (2d) 966. Chas. Romick of Dallas, for relators. John Davis of Dallas, for respondents.

Foreign Corporations

Arizona.

Interference in internal management of affairs of a corporation is not within the jurisdiction of courts of a foreign state. A case in which the Supreme Court of Arizona refused to interfere with the internal affairs of a corporation organized under the laws of another state is *Van Denburgh v. Tungsten Reef Mines Co. et al.*, 63 P. (2d) 647. There, the validity of the election of a member of a corporation's board of directors, occurring in California, was regarded as a

matter affecting only the internal management of the company. Arizona was held not to have jurisdiction in an equitable action for fraudulent conversion or dissipation of the assets of the corporation by its directors, although the property involved was in Arizona, where none of the directors were ever personally served within the state and none had appeared to answer the suit. The fact that the foreign corporation was authorized to do business in Arizona and had designated a statutory agent, did not, of itself, result in conferring jurisdiction on the Arizona courts under the circumstances. Robert Young and Oscar S. Elvrum of Los Angeles, Calif., and Chalmers, Fennemore & Nairn of Phoenix, for appellant. Kelby, Lawson & Garroway of Los Angeles, Cal., and Ellinwood & Ross of Phoenix, for appellee Tungsten Reef Mines Co. Ernest C. Griffith of Los Angeles, Cal., for appellee John J. Seeman.

California.

Service of process ordered set aside, where made upon California statutory agent of a foreign corporation in action involving tort committed in another state in no way connected with California business. The question was whether plaintiff's service of summons in an action in the United States District Court, Southern District, California, Central Division, might, under the California law, be served upon the California statutory agent of defendant foreign corporation in a suit arising upon a statutory tort committed in another state, the alleged tort being in no way connected with business transacted by the defendant in California. The court, after quoting the pertinent portion of section 405 of the California Civil Code, requiring a foreign corporation to designate a statutory agent for the service of process, and noting that there was no decision of the highest California court authorizing the service of process questioned, construed the requirement so as to exclude from their operation suits founded upon causes of action not arising in the business done by such a foreign corporation in California. Defendant was therefore held entitled to an order quashing the service of summons. *Miner v. United Air Lines Transport Corporation*, 16 F. Supp. 930. Randall & Bartlett of Los Angeles, Cal., for plaintiff. Jesse H. Steinhart and John J. Goldberg of San Francisco, Cal., for defendant.

Iowa.

Iowa insurance company held not doing business under Missouri statutes so as to render default judgment obtained in a Missouri court enforceable in Iowa. Plaintiff had secured a judgment by default in a Missouri court against defendant Iowa insurance corporation, which was not licensed to do business in Missouri. This judgment it sought in this action to enforce in Iowa. Defendant resists this on the ground that valid service was not had in Missouri in initiating the suit in that state. Service had been made under section 5897, R. S., Missouri, 1929, authorizing service upon an un-

licensed foreign insurance company by delivery of summons and complaint to any person "who adjusts or settles a loss or pays the same for such insurance corporation, or in any manner aids or assists in doing either." Service had been made upon a Missouri physician, who, while receiving from defendant no annual or fixed retainer, had for four or five years prior to the service acted for defendant in making physical examinations of persons in Missouri having claims under defendant's policies. Three such persons testified that settlements were discussed and that the physician made recommendations to defendant, the claims being later satisfied accordingly by payment to claimants, no other persons being involved in the settlements. The Iowa Supreme Court, three members dissenting, affirms a judgment of the lower Iowa court for defendant upon a directed verdict, on the ground that this evidence did not warrant a holding that, at the time of the service upon the physician, defendant was present in Missouri, doing business there. The court remarked that "if defendant on occasions voluntarily entered Missouri, by doing business of a temporary character through an agent, its right to depart from that state by concluding the business was not impeded by any duty owing plaintiff. There seems to be no foundation on which to rest a holding that defendant was under obligation to plaintiff to remain in the state for the purpose of service of process after the three alleged instances of doing business, not associated with plaintiff or her decedent, had terminated." The dissenting opinion took the view that the defendant was doing business in Missouri and that the physician was a proper person upon whom service of process might have been made under the terms of the Missouri statute. *Saunders v. Iowa State Traveling Men's Association,** Iowa Supreme Court, December 15, 1936. George L. Davis of Kansas City, Missouri, and J. R. Jaques of Ottumwa, Iowa, for appellant. E. C. Mills of Des Moines and E. K. Bekman of Ottumwa, for appellee. Commerce Clearing House Court Decisions Reporting Service Requisition No. 168786.

* The full text of this opinion is printed in **The Corporation Tax Service, Iowa volume, page 509.**

New York.

Foreign newspaper corporation publishing advertising solicited independently by New York advertising agency held not doing business in New York. Defendant was an Oklahoma newspaper corporation engaging directly in no activities in New York. Service of summons was made upon defendant by serving a New York corporation which was an advertising agency soliciting advertising for various newspapers, of which defendant was one. There was no direct contact between the advertisers and the defendant, the agency billing the advertisers on its own account and paying defendant for the newspaper space it used. The United States District Court, Southern District of New York, reaches the conclusion that defendant had not extended its activities to New York to such a

LET THE SHOEMAKER STICK TO HIS LAST!

(—*and the Sales Manager to his Sales!*)

WOULD it be good business to choose an accountant to go out to close a sale? Or a salesman to make out a tax report?

Inefficient, to say the least of it.

Yet, when you come to think about it, not much more inefficient than choosing a salesman, or a service manager, or a branch store-keeper, to handle a company's corporate representation.

On a company's corporate agent there may be served, at any moment, process which not only calls for appearance in court upon a certain date, but—buried for the inexperienced eye in its paragraphs of formalities and technicalities—commands the corporation to desist from certain acts in the meantime; or process which summons for appearance upon a certain day and then further on demands a preliminary appearance upon a different and much earlier day; process which for the company's full protection requires notification not only to the company's attorney but immediately to some representative in the state, or perhaps to the liability insurance company; or process of such nature that only telegraph or long distance telephone can provide the prompt attention it needs.

degree that it should be obligated to defend an action in this state. *Taylor v. The Tulsa Tribune Company,** United State District Court, Southern District of New York, January 11, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 169963. Enos S. Booth (Harris Jay Criston, of counsel), for the plaintiff. Peaselee & Brigham (Gerald J. McMahon, Dexter Brigham and Wadsworth Cresse, Jr., of counsel), for the defendant.

*The full text of this opinion is printed in **The Corporation Tax Service, New York volume, page 213.**

Taxation

Federal.

A Federal documentary stamp tax is due where stock is issued, at the instance of the one who is entitled to receive the stock, in the name of a nominee who receives no beneficial interest therein. "These three cases," said Justice Brandeis of the Supreme Court of the United States, "present, in the main, the same question: When, at the instance of one entitled to receive stock, the certificates therefor are, at his request and for his convenience, issued by the corporation in the name of a nominee who receives no beneficial interest therein, does the transaction involve a transfer by the beneficial owner requiring a documentary stamp pursuant to Section 800, Schedule A-3, of the Revenue Act of 1926, February 26, 1926, c. 27, Title VIII, 44 Stat. 99, 101?" The statute making taxable rights "to receive" shares or certificates, the transaction was held a taxable one, the court saying: "The tax is exacted because the taxpayer transferred 'the right to receive' the certificate." "The legality of the issuance of the stock in the names of the nominees rests on the fact that the taxpayers authorized such issuance and granted their nominees the right to receive the stocks entered in their names. The grant of that authority is a transfer of the 'right to receive' within the meaning of the Act; and we are not to look beyond the Act for further criteria of taxability." *Founders General Corporation v. Hoey, Collector of Internal Revenue, United States v. A. B. Leach & Co. Inc.* and *United States v. Automatic Washer Company,** Docket Nos. 398, 331 and 330, Supreme Court of the United States, March 1, 1937. Royal E. T. Riggs, for the petitioner. (Rehearing denied March 8, 1937, in *United States v. Automatic Washer Company,* Docket No. 330.)

*The full text of this opinion is printed in the **Standard Federal Tax Service—1937—page 9562.**

Illinois.

May the intangibles of a foreign corporation be taxed in Illinois? The Supreme Court of Illinois answers this question with an emphatic negative, by granting an injunction against the collection of a tax by the assessor of Cook County based upon an assessment

against the credits and "franchise" of appellant corporation, consisting, as stipulated by the assessor, "of that portion of the trade-marks, copyrights, patents, good will, capitalized earning power and franchise allocated to the Chicago office on the basis of the proportion of business produced by the use of said intangibles at the Chicago office of the complainant corporation." The court stressed the fact that there was no statutory authority for the levy, saying: "No specific statutory provision can be found which would warrant the imposition of such a tax, nor is any language used in the Revenue Act by which such authority can be fairly implied." "The mere fact that credits arose in Illinois is not a basis for taxation." "It is our opinion that the assessor of Cook county acted without statutory authority in assessing a tax upon the credits, franchise or other intangible property of the appellant corporation." *Wheelock Lovejoy & Co., Inc. v. Gill,** Illinois Supreme Court, February 12, 1937. CCH Court Decisions Reporting Service Requisition No. 171891.

* The full text of this opinion is printed in **The Corporation Tax Service**, Illinois volume, page 2899-33.

Missouri.

May deposits in a New York bank, belonging to a Delaware corporation with its only office in Missouri, be taxed in Missouri as having a situs there? That such deposits have a situs in Missouri and are taxable there under the Missouri statutes, is the holding of the United States Circuit Court of Appeals, Eighth Circuit, on the authority of Wheeling Steel Corporation v. Fox, 56 S. Ct. 773, 298 U. S. 193, (The Corporation Journal, June, 1936, page 210), the court finding little to distinguish the case before it from the case cited. *Smith, Collector of Revenue of Greene County, et al. v. The Ajax Pipe Line Company,** United States Circuit Court of Appeals, Eighth Circuit, January 22, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 170890. Nat W. Benton (Ray McKittrick, Attorney General, and James L. Hornbostel, Asst. Attorney General, on the brief), for appellants. Charles F. Newman (L. G. Owen and Ben M. Neale, on the brief), for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Missouri volume, page 389-31.

Oklahoma.

Long-time indebtedness may be deducted in determining value of capital stock for annual license tax purposes. The Oklahoma Tax Commission contended that certain long-time bonds and indebtedness of plaintiff corporation, maturing more than two years from the date of issue, must be added to the value of plaintiff's capital stock employed in business in Oklahoma in determining plaintiff's annual license fee, while the company took the position that the bonded indebtedness should be deducted as liabilities from the capital used in Oklahoma. There was no question of apportioning

the value of the capital stock, because all of the corporation's business was done in Oklahoma and all of its property was located there.

The statutes provided that the tax was to be measured by the value of the capital stock employed in the state. A 1933 amendment (Chapter 155, Session Laws of 1933), contained the following provision: "For the purpose of this act, bonds, notes, debentures or other evidences of indebtedness maturing two years or more after issuance, shall be treated as capital, and included as a part of the capital stock employed in the business." The Oklahoma Supreme Court, after considering the various provisions of the statute, found that the fee was to be based on "the value" of the capital stock and that the value of the capital stock was to be determined from the books of the corporation. The court said that "book value," as defined in a majority of the available decisions, is the market value of the assets of the corporation, less its liabilities and, in the absence of a statutory provision to the contrary, the corporation in arriving at the book value, may deduct from the market value of its assets the sum of its liabilities, including long-time indebtedness. Referring to the 1933 amendment quoted above the court continued: "The particular provision of the statute here under consideration is therefore rendered ineffective for any purpose in arriving at the value upon which the tax is computed, and the result is the same as if the provision had been omitted." Plaintiff's contention was therefore upheld. *Southwestern Light & Power Co. v. Oklahoma Tax Commission et al.,** 62 P. (2d) 637. Leslie Pain and S. I. McElhoes of Chickasha, for plaintiff. C. D. Lund, C. W. King and Wendell Barnes of Oklahoma City, for defendants.

* The full text of this opinion is printed in **The Corporation Tax Service**, Oklahoma volume, page 1719.

Oregon.

Delinquency in payment of real property taxes by a corporation is no bar to its maintenance of suit. In an action in the Oregon Supreme Court, the defendant contended that because the plaintiff corporation was delinquent in the payment of its real property taxes, it should not be permitted to maintain any action within the state. The court found, however, that the statute upon which defendant relied, (Sec. 25-239, Oregon Laws), related only to taxes and fees imposed as incidental to the conduct of corporation business and the exercise of corporate franchises, and not to general property taxes. *East Side Mill and Lumber Company et al. v. Dwyer Logging Company,** 64 P. (2d) 89. Leo J. Hanley (Cookingham & Hanley, Glen McCarty, and Ridgeway, Johnson & Kendall, on the brief), of Portland, for appellant. L. J. Balbach and Wendell K. Phillips, (Sheppard & Phillips and L. J. Balbach, on the brief), of Portland, for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service**, Oregon volume, page 1644.

Utah.

Foreign holding company held exempt from franchise tax where a number of its subsidiaries filed franchise tax returns. Plaintiff was a Delaware holding corporation, whose sole activities in Utah consisted in holding stockholders' meetings, at which reports were presented and directors elected, and directors' meetings at which matters connected with the control and management of affairs of its subsidiaries were considered. Plaintiff's subsidiaries consisted of both Utah and foreign corporations. It claimed exemption from the Utah franchise tax under section 80-13-5 (16), exempting "corporations whose sole business consists of holding the stock of other corporations for the purpose of controlling the management of affairs of such other corporations, if such other corporations make returns under this chapter." The defendant Tax Commission had levied a tax upon plaintiff because *all* of the plaintiff's subsidiaries did not make returns under the provisions of the Utah franchise tax law. The Utah Supreme Court set the levy aside, saying: "We are of the opinion that the Tax Commission in exacting the tax misinterpreted or misapplied the statute. The evident meaning and purpose of the statute is to exempt holding corporations, 'if such other taxable corporations make returns under this chapter' as required. Sec. 80-13-5 (16) supra, exempts the plaintiff corporation from the tax imposed. If the plaintiff corporation were not exempted under the exempting clause referred to, still the statute, as applied and interpreted by the Commission, would be discriminatory and would deprive plaintiff of property without due process of law. One holding corporation holding only control-stock of Utah corporations making returns would be exempt under the construction made by the Tax Commission, while a similar corporation holding both domestic and foreign stock would not be exempt." *First Security Corporation of Ogden v. The State Tax Commission of Utah*, 63 P. (2d) 1062. Thatcher & Young of Ogden, for plaintiff. Ned Warnock of Salt Lake City, for defendant.

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* The full text of this opinion is printed in **The Corporation Tax Service, Utah volume, page 1514.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 570. *Southern Natural Gas Corporation et al. v. The State of Alabama,* 170 So. 178. (The Corporation Journal October, 1936, page 232.) Validity of franchise tax upon qualified foreign corporation engaged in interstate activities, with principal office in Alabama. **Appeal filed December 16, 1936. Probable jurisdiction noted January 4, 1937. Argued March 10, 1937.**

LOUISIANA. Docket No. 652. *Great Atlantic & Pacific Tea Company v. Grosjean, Supervisor of Public Accounts et al.,* 16 F. Supp. 499, (The Corporation Journal, November, 1936, page 256.) Constitutionality of Louisiana Chain Store Tax. **Appeal filed January 14, 1937. Probable jurisdiction noted February 1, 1937. Assigned to day call on March 29, 1937.**

MISSOURI. No. 712. *Phillips Pipe Line Company v. The State of Missouri,* 97 S. W. (2d) 109. (The Corporation Journal, January, 1937, page 303.) Validity of franchise tax as applied to activities of a pipeline company. **Appeal filed February 5, 1937. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 1, 1937.**

NEW YORK. Docket No. 693. *Vaughan et al. v. The State of New York,* 272 N. Y. 102, 5 N. E. (2d) 53. (The Corporation Journal, January, 1937, page 304.) Constitutionality of New York Stock Transfer Tax law as applied to transfer of par value shares. **Appeal filed February 2, 1937. The motion of the appellee to dismiss the appeal granted and the appeal dismissed for want of a substantial Federal question, March 1, 1937.**

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia,* 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.**

WASHINGTON. Docket No. 418. *Henneford et al. v. Silas Mason Co., Inc. et al.,* U. S. District Court, Eastern District of Washington, August 3, 1936; 15 F. Supp. 958. (The Corporation Journal, November, 1936, page 258.) Involves validity of State of Washington "Compensating Tax." **Appeal filed September 30, 1936; probable jurisdiction noted October 19, 1936. Motion to advance argument submitted by counsel for appellants, October 26, 1936. Motion granted and case advanced for argument on Monday, December 14, 1936. Argument concluded, December 15, 1936. Restored to the docket February 1, 1937, and assigned for reargument on Monday, March 1. Reargument commenced for the appellants and continued for the appellees, March 1, 1937. Reargument concluded March 2, 1937.**

*** Data compiled from CCH U. S. Supreme Court Service, 1936-1937.**

Regulations and Rulings

ALBERTA—An Order-in-Council recently issued provides that shares without par value are to be taken at $1 per share for the purpose of the Corporations Tax Act, unless a maximum price or consideration for which such shares shall be issued is stated in the Letters Patent, Memorandum or Articles, in which case such maximum price or consideration is used.

ALABAMA—A domestic corporation, which has paid a fee upon a prior increase of capital stock, reduced the amount of its capital stock, and then increased the same, but not to an amount as great as the prior increase. Under these circumstances, the Attorney General of Alabama ruled that a tax must be paid upon the latest increase. Full text of opinion is shown in the Alabama Corporation Tax (CT) Service, page 503.)

CALIFORNIA—A foreign corporation doing an investigation business in California through the agency of another foreign corporation, which is properly licensed as a detective agency by the State, must also be licensed as a detective agency in the opinion of the California Attorney General, as reported in full at page 571-107 of the California CT Service.

The Attorney General has also ruled that interest paid on a Federal income tax is an allowable deduction under the California Bank and Franchise Tax Act. (California CT Service, page 235-99.)

COLORADO—The Colorado use tax, as applied to the storage, use or consumption of tangible personal property brought into the state by a non-resident, is not, in the opinion of the Attorney General, discriminatory and violative of the "commerce clause," since it is supplementary to the retail sales tax law, which imposes a like tax on the sale of like goods in the state. (Opinion in full text in the Colorado CT Service, page 7606.)

FLORIDA—A corporation organized under the law prior to 1925, which reincorporated under the 1925 law and changed its charter provisions, must pay a reincorporation fee. (Attorney General's opinion, reported in Florida CT Service, page 154.)

MICHIGAN—An editorial comment upon a recent meeting of the State Board of Tax Administration which determined bunker coal, certain sales by vending machines, and garment hangers given away by dry cleaners, to be exempt from the Sales Tax, as well as holding the operation of ore mining and crude oil recovery to be industrial processing, is printed in the Michigan CT Service, page 575-73. On the same page mention is made of another meeting of the Board at which it was held that milk bottles are used in the industrial processing of milk and their sale is therefore exempt from the sales tax.

MONTANA—The State Board of Equalization has ruled that Federal income taxes and Montana corporation license taxes may be deducted only in the year in which paid. The deduction of a reasonable addition to bad debt reserve is allowed if such deduction is approved and allowed in the Federal return. (Montana CT Service, page 1555.)

Some Important Matters for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Dominion Companies.

Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Return of Withholding at source due on or before April 15.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return and Return of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15 and delinquent after June 1.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW JERSEY—Franchise Tax Return due on or before first Tuesday in May.—Foreign Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 IT-Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

OHIO—Quarterly Retail Sales Tax Return and Vendors' Excise Tax due on or before April 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TENNESSEE—Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return and Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.